

PS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES M. WEST,

Plaintiff,

-v-

15-CV-0432RJA
ORDER

B. FISHER, Commissioner of New York
Department of Corrections and Community
Supervision, et al.

Defendants.

Plaintiff, James West, a prisoner incarcerated at Five Points Correctional Facility, has filed this action seeking relief under 42 U.S.C. § 1983 (Docket No. 1). Plaintiff was granted permission to proceed *in forma pauperis*, some claims were dismissed, and Plaintiff was directed to file an Amended Complaint by August 26, 2016 (Docket No. 7). By prior Motion, Plaintiff requested a copy of his Complaint and additional time to file an Amended Complaint stating that he had been injured (Docket No. 8). Plaintiff now provides additional documentation regarding his injury and moves for a further extension of time, for “the return of Plaintiff James M. West’s legal exhibit’s to the Court with the original civil complaint” and for recusal of the Court (Docket No. 10).

Plaintiff, despite his injury, has demonstrated ample capacity to file papers with the Court in lieu of complying with the Order that he amend his Complaint. However, Plaintiff will be given a final extension of time to file the Amended Complaint.

Plaintiff’s Motion for recusal has been considered and is denied. See 28 U.S.C. §§ 455(a) & (b)(1).

Plaintiff requests the return of legal exhibits and the original Complaint in this action. Plaintiff was provided with a copy of the complaint by prior Order (Docket No. 9). Plaintiff will be provided with an additional copy of the Complaint, however the original will be retained by the Court. Plaintiff states in his motion that attached to his Complaint there were “approximately 12 or more exhibits” (Docket No. 10 p. 2). Plaintiff is advised that he has filed no legal exhibits in this action. The only attachment to Docket No. 1 is the envelope in which the Complaint arrived (Docket No. 1). Plaintiff’s filings regarding his *in forma pauperis* application contained no legal exhibits (Docket Nos. 2, 5 & 6). Plaintiff’s other filings were his prior motion for an extension, and the current motion (Docket Nos. 8 & 10).

IT HEREBY IS ORDERED, that Plaintiff is granted leave to file his Amended Complaint by **January 6, 2017**;

FURTHER, that Plaintiff’s recusal motion is denied;

FURTHER, that Plaintiff’s request for documents is granted in part and denied in part and the Clerk of Court is directed to send to Plaintiff with this Order a copy of the Complaint (Docket No. 1), a blank § 1983 complaint form, and the instructions for preparing an amended complaint;

FURTHER, that in the event Plaintiff fails to file an Amended Complaint as directed by **January 6, 2017**, his remaining claims are dismissed with prejudice, and this action is dismissed without further order of the Court;

FURTHER, that in the event the Complaint is dismissed because Plaintiff has failed to file an Amended Complaint, the Court hereby certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith, and leave to appeal to the Court of Appeals as a poor person is denied. *Coppedge v. United*

States, 369 U.S. 438 (1962). Further requests to proceed on appeal as a poor person should be directed, on motion, to the United States Court of Appeals for the Second Circuit, in accordance with Rule 24 of the Federal Rules of Appellate Procedure.

SO ORDERED.

s/Richard J. Arcara

Richard J. Arcara
United States District Judge

DATED: December 6, 2016
Buffalo, NY